



RIGHTS STUFF

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Should Developmentally Delayed Parents Be Immune From Losing Their Parental Rights?

T.B. is a woman with two biological children. The Indiana Department of Child Services (DCS) removed the children from her care when they learned that she had left the children with a developmentally delayed 13-year-old babysitter. DCS found the children to be hungry and without proper medical care.

Following standard practice, DCS attempted to reunite T.B. with her children. They required T.B. to undergo medical and mental health assessments, take parenting classes, visit with the children, find safe and stable housing and find a stable source of income. She failed to comply with many of the requirements. An evaluation found that she had poor reasoning skills, poor memory and/or attention skills and a low-to-well-below average overall cognitive functioning ability. During the period that the children were in foster care, T.B. was arrested twice for driving without a license. She testified at one hearing that genetic testing had shown that she had "alien genes."

DCS testified that the children did much better at school and in daily life when they were in foster care, and that trial visits with T.B. had not gone at all well. So they moved to have her parental rights terminated.

T.B.'s attorney argued that "mentally retarded parents should be immune from losing their parental rights." He compared involuntary parental termination proceedings to criminal proceedings, saying that losing one's children is a "penalty" and a violation of the constitutional prohibition against cruel and unusual punishment. He said that termination of parental rights makes the children "legally dead" to the parent. Such a result, he said, is not proportional to the offense when dealing with a parent who has a mental disability. He said it was time for the Court to "examine the practice of terminating the parental rights of a parent who is mentally retarded and adopt a prohibition against such a practice."

The Court thought differently. The purpose of terminating parental rights is not to punish the parents, but to protect the children. Developmental disabilities by themselves are not proper grounds for a parent to lose her parental rights, but nor are they "proper grounds for automatically prohibiting the termination of parental rights."

The case is T.B. v. Indiana Department of Child Services, 971 NE2d 104 (In. Ct. App. 2012).

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Losing Your Temper at Work Rarely a Good Idea

Abidan Muhammad began working for Walmart as an overnight deli stocker early in 2008. In June, he experienced pain in his hands. In July, he asked for and received a leave of absence for carpal tunnel syndrome and filed for worker's compensation benefits. He returned to work with a doctor's statement saying he should not engage in work that required repetitive use of his hands or lift anything greater than 25 pounds for a month. Walmart honored the medical restriction by making him a greeter at the front of the store. Occasionally, though, he had to take returned merchandise and place it back on the shelves. If a returned item weighed more than 25 pounds, he left the item in the cart for someone else to put on the shelf. He did not get in trouble for not replacing these items on the shelf.

On September 30, 2008, Muhammad arrived at work as scheduled and clocked in, using his name badge. Another employee told him that she was surprised to see him as she had heard he had been fired. He told her he had not been fired.

Later that night, during his break, he tried to log into the store's computer to request a transfer. The computer would not accept his name badge. He asked an assistant manager, Frank Henry, if he had been fired and the manager said, "Not to my knowledge." He then asked Henry why he couldn't get on the computer. Henry said he didn't know and said he would look into that. He

told Muhammad to go back to work, as his break was over.

Muhammad went back to work, but according to video camera footage, returned to talk to Henry and other managers again about a minute later. He threw his badge on the floor and told Henry, "This s_ _ _ don't work." Henry, who was much smaller than Muhammad, backed away from him. Muhammad approached him in a confrontational manner and said he was upset by how Henry had dismissed him in their previous conversation. Another manager told Muhammad to back off.

Muhammad yelled, "No. You back off!" He said, "My name is Abidan. I'm a man. I'm a grown man. You want to talk to me like a grown man. I'm tired of the way y'all treat people around here." He accused the store of "trying to play me." One of the managers told Muhammad to leave the store. Muhammad said, "I said what I have to say. I'm out of here."

Muhammad sued, saying Walmart had discriminated against him on the basis of his disability and/or because he had filed a worker's compensation claim. He lost. There was simply no evidence that his interaction with Henry had anything to do with his alleged disability or his worker's compensation claim.

In court, his attorney tried to argue that Muhammad had been a victim of sex discrimination, because the same night of his inci-

dent, a female employee was assaulted by her boyfriend at the store but was not reprimanded in any way, while he was told to leave because he raised his voice at work. But Muhammad did not check "sex" on the EEOC form when he filed his complaint. In addition, Walmart had legitimate reasons to treat the female employee as a victim and not as an instigator of trouble in the workplace. The Court sanctioned the attorney for making such an unsubstantiated argument, fining her \$7,500 and reprimanding her.

The case is Muhammad v. Walmart Stores East, 2012 WL 5950368 (NY W.D. D. Ct. 2012).





DOJ Settles Case Against Medical Schools

In 2010, the New Jersey Medical School and the School of Osteopathic Medicine accepted a student identified as Mr. M. But the school withdrew its acceptance when it learned that Mr. M had hepatitis B. Another student, Mr. C., was placed on the wait list for admission to the School of Osteopathic medicine that same semester. But when the school learned that he, too, had hepatitis B, it rescinded his acceptance as well.

Both men filed complaints alleging discrimination on the basis of disability with the U.S. Department of Justice (DOJ), in violation of the Americans with Disabilities Act (ADA). The DOJ recently announced that it had reached settlements in both matters.

The schools, in evaluating these students' medical condition, considered their high viral loads and levels of infectivity, the risk of transmission to patients, the applicants' own health and welfare, their expected clinical education and patient safety. They determined that the applicants were "highly infectious" and as such posed a direct threat to the health and safety of others.

However, the schools were operating under the misimpression that the applicants, once they were students, would be required to perform "exposure-prone invasive procedures" as defined by the Centers for Disease Control. Based on this misunderstanding, the school made a good faith, but wrong, determination that

Mr. C and Mr. M would pose a direct threat to the health and safety of others. But in fact, neither school actually required its students to perform "exposure-prone invasive procedures." The students could perform their required educational duties without endangering their patients if they took appropriate precautions.

In the settlements, the schools agreed to admit both students, to accept students with hepatitis B and to permit them to engage in educational activities that would not put patients at risk, to post notices about their nondiscrimination policies, to pay both students \$17,500 and to give both students \$20,000 in tuition credits.

Jury Awards More Than \$20 Million in Sexual Harassment Case

A jury in Florida has ordered Four Amigos Travel, Inc. and Top Dog Travel, Inc. to pay more than \$20 million to eight former employees.

According to the lawsuit, the employer subjected female employees to egregious sexual harassment on a daily basis. The abuse included unwanted sexual advances, inappropriate touching of themselves and of the female employees and repeated propositions for sex in a work environment that was filled with sexual banter, abuse of power

and disrespect for women. The men regularly used profane terms for women. One male supervisor showed a photograph of his genitals to a female employee and asked, "Impressive, aren't I?" When a manager brought forth the victims' complaints to his supervisor, the manager was fired.

At the trial, the corporate defendants defaulted, meaning they presented no evidence or defense. Thus, the only issue before the jury was the amount of damages.

Gregory Lee McClinton, the Equal Employment Opportunity Commission's lead attorney in the case, said, "This was a long journey for these women who were forced to work under unspeakable conditions at this workplace. Their testimony about how the sexual harassment occurred and how it affected their lives was very powerful."

If you have questions about fair employment laws, please contact the BHRC.



Does Housing for Deaf People Discriminate on the Basis of Disability?

Apache ASL Trails is a subsidized housing project in Tempe, Arizona. It was designed by a deaf architect to meet the needs of deaf tenants. Its units have video phones and lights that flash when the phone or the doorbell rings. Wiring in common areas pipes announcements through loudspeakers into residents' hearing aids. The purpose of the design was to foster a sense of community for residents who use sign language. The facility gave preference to deaf and hearing impaired applicants, who occupy 69 of the 75 units. Its marketing efforts included publications that focus on deaf people but also general circulation publications.

After Housing and Urban Development (HUD) audited the housing project last year, questions have arisen as to whether the facility discriminates, favoring people who are deaf or hearing-impaired over other people who may have different or no

disabilities. In June, 2012, HUD drafted an agreement that would limit the number of people with hearing impairments who could live in the facility.

Advocates for deaf people argued that HUD's position ignored the unique communication needs of deaf people. Advocates for people with other types of disabilities such as autism say the deaf advocates' position is a form of reverse discrimination.

At this point, HUD is waiting for more evidence from all stakeholders before it decides its next step.

(Article based on "A Haven for the Deaf Draws Federal Scrutiny Over Potential Discrimination," by Fernanda Santos, New York Times, April 29, 2013, p. A-9.)



Barbara McKinney, Valeri Haughton, Nicole Bolden and Byron Bangert competed in the Monroe County Public Library's VITAL Quiz Bowl in April.

(Photo courtesy of VITAL)